



POLICE DEPARTMENT

November 20, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-25301
Police Officer Arianny Bernabel	:	
Tax Registry No. 967772	:	
34 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Theresa Freitas, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Arianny Bernabel, on or about August 20, 2020, at approximately 1522 hours, while assigned to the 34 Precinct and on duty, on the telephone inside of the 34 Precinct, New York County, abused her authority as a member of the New York City Police Department, in that she refused to provide her name to **Complainant** without police necessity.

A.G. 304-11

COMPLIANCE WITH THE
NYC RIGHT TO KNOW ACT

2. Police Officer Arianny Bernabel, on or about August 20, 2020, at approximately 1522 hours, while assigned to the 34 Precinct and on duty, on the telephone inside of the 34 Precinct, New York County, abused her authority as a member of the New York City Police Department, in that she refused to provide her shield number to **Complainant** without police necessity.

A.G. 304-11

COMPLIANCE WITH THE
NYC RIGHT TO KNOW ACT

3. Police Officer Arianny Bernabel, on or about August 20, 2020, at approximately 1522 hours, while assigned to the 34 Precinct and on duty, on the telephone inside of the 34 Precinct, New York County, was discourteous in that she intentionally disconnected the phone call between herself and **Complainant** without police necessity.

A.G. 304-06, Page 1, Paragraph 2

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

4. Police Officer Arianny Bernabel, on or about September 21, 2021, at approximately 0853 hours, while assigned to the 34 Precinct and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB regarding the August 20, 2020 phone call between herself and **Complainant** (*as amended*)

A.G. 304-10

MAKING FALSE STATEMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 3, 2023. Respondent, through her counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB-APU presented a hearsay case, entering into evidence Complainant's statement to the

CCRB, as well as the audio recordings and transcripts of Complainant's telephone call to the 34 Precinct on the date in question and Respondent's September 21, 2021 interview with CCRB. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Guilty of Specifications 1 and 2 and recommends the forfeiture of three (3) vacation days for each specification to run concurrently. Additionally, I find Respondent Not Guilty of Specifications 3 and 4

ANALYSIS

The following is a summary of the relevant facts which are not in dispute. On August 20, 2020 at approximately 1522 hours, Complainant made a telephone call to the 34 Precinct, to obtain a complaint report number for an incident which occurred several days earlier. Complainant recorded the call. Respondent, who was assigned as the telephone switchboard operator ("TS") for the third platoon, answered. Complainant asked "Hi, I have to ask who you are? Would you kindly give me your name and your badge number, please?" Almost immediately, the phone disconnected. A CCRB complaint regarding the incident was filed, and thirteen months later, on September 21, 2021, Respondent was interviewed by investigators pursuant to the provisions of P.G. 211-14 (now A.G. 318-11).

Complainant did not appear to testify at trial; in evidence is the recording and transcript of his August 26, 2020 phone interview with CCRB. (CCRB Ex. 2, 2A) In that interview, Complainant explained that on the date in question, he called the 34 Precinct ten times before the eleventh call was answered by Respondent. He identified the operator's voice as female, but complained that she spoke so quickly that he could not hear the name she gave when she answered the call. He alleged that immediately thereafter the call was terminated, telling the

CCRB investigator, “So, after 11 calls I finally get through. I politely ask the name and badge number of the person answering and I get hung up on.” (CCRB Ex. 2A at 10)

The audio recording and official transcript of the phone call at issue are also in evidence. (CCRB Ex 1, 1A) At the start of the recording, apparently while initiating the call, Complainant essentially narrates that he has tried calling the 34 Precinct nine times¹ over the course of the day in order to obtain the report number for a harassment complaint he made on an earlier date, and his calls have not been answered. (CCRB Ex.1 at 00:00-00:33) The recording continues for several minutes with Complainant speaking over the sound of the automated operator at the precinct instructing the caller to enter the number of the party they wish to speak with. After ringing for several minutes, the call is answered by Respondent, whose first couple of words are unintelligible; she then can be heard saying, “How can I help you?” Complainant asks for her name and badge number; approximately one second later there are three quick beeps, after which Complainant is heard saying, “Oh, hung up on me. How nice.”(CCRB Ex.1 at 03:57-04:13)

In her trial testimony, Respondent denied intentionally disconnecting the call. She confirmed that she was the third platoon “TS” operator at the 34 Precinct on August 20, 2020, and that she answered the phone when Complainant called. Listening to the recording of the call she admitted that it was very difficult to understand what she said when she answered the call, because she spoke so quickly. Respondent explained that on the date in question, she was a relatively new officer, out of the Academy for about eight months, and when Complainant asked for her identifying information, she was unsure if she was permitted to provide it over the phone. She went to ask her sergeant and upon returning to the call, it had been disconnected. (Tr. 12-13) During cross-examination, Respondent acknowledged that she now knows that she is required to

¹ There is a minor discrepancy between Complainant’s CCRB interview and the contemporaneous recording of the incident regarding the number of phone calls he made, which is not relevant to the ultimate issues in this decision.

provide her name and shield number upon request, including over the telephone. (Tr. 17)

Respondent repeatedly denied intentionally hanging up on Complainant, insisting, “I know it sounds like that. But I don’t know if it was by accident. But I did not hang up the phone. I did not do that.” (Tr. 14)

Respondent went on to recount what transpired during her official interview with CCRB, which occurred on September 21, 2021, over one year after the disconnected call in question. She recalled that prior to, and indeed, for most of the interview she believed the topic of the investigation was a phone call from a different member of the public which concerned a noise complaint. Towards the end of the interview, the CCRB investigator played the recording of Complainant’s call, and Respondent realized that they were talking about two different phone calls. She described feeling “led on” by the investigators, who knew that the interaction with Complainant lasted mere seconds, yet continued to allow her to answer questions about the other call, which was a more fulsome conversation. (Tr. 13-14) Respondent explained that when she realized that the subject of the investigation was a different incident, she did not ask to clarify because she was scared, and did not know she was allowed to do so. (Tr. 21) She also noted that her attorney, who was present during the interview, failed to correct the record. (Tr. 14, 20) Respondent testified that prior to her CCRB interview, she was not aware of Complainant’s identity. (Tr. 16)

Complainant’s hearsay statement consisted mostly of his inquiring about other complaints he lodged with CCRB, the general difficulties he has experienced on various occasions when calling the 34 Precinct, and concluded with his assertion that Respondent hung up on him. (CCRB Ex. 1A at 16-17)

Specifications 1 and 2: Refusal to Provide Name and Shield

Respondent stands charged with wrongfully refusing to provide her name and shield number; it is undisputed that she never provided her shield number and that her name, if provided initially, was not understood by Complainant, and was not repeated when he asked for it.

While maintaining that she did give her name upon answering, Respondent acknowledged that she spoke too quickly to be understood. She further explained that she was unsure of the rules regarding giving her shield number over the phone. (Tr. 12) Upon careful review, the tribunal found that although Respondent's greeting was indeed unintelligible at normal speed, when listening at a slower speed it is clear that, in fact, she did not provide her name. When answering the call Respondent stated "Good evening, 34 Precinct, how can I help you." (CCRB Ex. 1 at 03:37-03:39) Respondent admitted that she did not immediately state her name and provide her shield number when Complainant made the request. Indeed she stepped away from the call to ask an unidentified supervisor if she was required to do so over the phone.

Administrative Guide 304-11 and its predecessor, Patrol Guide 203-09, both clearly direct officers to, "Courteously and clearly state your rank, name, shield number and command...to anyone who requests you to do so." The question for this Tribunal is whether Respondent's hesitation to do so was reasonable under the circumstances. Although Respondent was a fairly new officer, she had been assigned as the "TS" operator multiple times prior to this occasion, and had been out of the Academy for about eight months. At that point in her career, based upon her training and experience, Respondent should have been aware that NYPD officers are required to provide their name, shield, and command upon request, whether that request occurs in person or over the telephone. There were no extenuating circumstances which

would have made it impractical or unsafe to immediately comply with Complainant's very straightforward request for this basic identifying information. Based on the foregoing, I find that Respondent's alleged ignorance of the rules regarding her obligation to provide this information to Complainant was not reasonable, and find her guilty of Specifications 1 and 2.

Specification 3: Discourtesy

Respondent has been charged with violating A.G. 304-06, being discourteous by intentionally disconnecting a phone call with a member of the public. It is undisputed that the phone call in question was terminated; however, there remains a question as to how that occurred. The record consists of two conflicting accounts: Complainant's hearsay claim that Respondent intentionally hung up on him after he asked for her name and shield, and Respondent's insistence that she is unsure how the call was disconnected, but that she did not intentionally end it. The record lacks any additional independent evidence of how and why the call was terminated.

During her official interview, Respondent heard the recording of the phone call for the first time. Upon hearing Complainant state, "Oh, hung up on me. How nice," Respondent spontaneously declared, "I definitely didn't hang up." (CCRB Ex. 2A at 25) She maintained that she did not hang up, even when questioned further by the investigators:

CCRB Investigator: So, you're saying that the phone-, that you didn't hang up but the, the phone call just got disconnected.

Respondent: Yeah, I would never- I wouldn't hang up. There's no reason to.

CCRB Investigator: Okay. Alright and-, okay, and like what makes you think this phone call just got disconnected you know, and it wasn't you that you know that disconnected it?

Respondent: Because I, you know, if I answer the phone, it's to see what's going on and help him and I wouldn't just hang up if-, just because he asked for my name and shield.

(CCRB Ex. 2A at 26)

Respondent was forthright during her testimony. Her explanations as to why she would not have disconnected the call make sense. There are many possible ways in which the call could have ended that do not involve an intentional act by Respondent and the record has insufficient evidence to establish a deliberate hang-up by Respondent. While the APU prosecutor need not rule out each and every possible scenario, Complainant's unsubstantiated hearsay claim that the call was deliberately terminated alone, is not sufficient to support a finding of misconduct.

Accordingly, I find Respondent Not Guilty of Specification 3.

Specification 4: Misleading Statement

Respondent has been charged with making a misleading statement in the course of her September 21, 2021 official interview with CCRB. In support of this specification, CCRB-APU directed the tribunal's attention to multiple line and page numbers, approximately eight and a half full pages, in the transcript of her interview, which was admitted into evidence as CCRB Exhibit 3A. (Tr. 9-10) I reviewed the transcript and the recording² in their entirety, paying particular attention to the specified pages; I also revisited the parties' summations. I find that CCRB-APU has failed to meet its burden of proof by a preponderance of the credible evidence that Respondent provided a misleading official statement.

In order to prevail on this charge, CCRB-APU must prove that Respondent intended to "misdirect the factfinder, and materially alter the narrative" by omission of material facts, repeated claims of not remembering an incident which a reasonable person would recall, or altering a prior statement when confronted with independent evidence. (A.G. 304-10) What I found in my review of the CCRB interview was an understandably nervous young officer who,

² CCRB Ex. 3 in evidence

in good faith, answered the questions posed and tried to recall a seconds-long telephone exchange, which occurred over a year before the interview.

Presumably, the CCRB investigators who interviewed Respondent familiarized themselves with Complainant's recording of the phone call, as well as the August 26, 2020 interview with him, prior to meeting with Respondent and her attorney. Having done so, it is clear to this tribunal that Respondent was recalling a different call about a noise complaint when she was first answering CCRB's questions. She continued to provide the investigators details about this other call when they should have known the exchange Respondent described was inapplicable to the incident CCRB was investigating because that conversation went no further than saying hello, what is your name and shield number. Indeed, no noise complaint was referred to in the subject call. When Respondent was asked about the incident she stated, "So, I still helped him with the matter. I think it was a noise complaint." (CCRB Ex. 3A at 5-6) The interview continued on this way:

CCRB Investigator: Right. Okay, so it seems like you believed there was, there was an incident involving noise, like a noise complaint that he was making and that was the reason he was calling the, the command. Right?

Respondent: Yep.

CCRB Investigator: How many times like can you approximate he called? Did, did he call more than once? Was it just one phone call?

Respondent: I, I'm not s-, I don't remember.

CCRB Investigator: Okay. And specifically so-, it seems like he called to make this, this complaint and you sent a unit?

Respondent: Yes, I definitely did send a unit and I think he kept like-, he probably kept calling. I'm not-, I just don't remember if he called like more than once or twice.

(CCRB Ex. 3A at 8-9)

Respondent continued telling them about the noise complaint call until the recording was finally played. At that moment, it is clear that Respondent realized she was being questioned about a different phone call. (CCRB Ex. 3A at 25)

Contrary to CCRB-APU's arguments during summation, Respondent's confusion and failure to forcefully object during her interview were an understandable response to answering multiple questions about one incident and then suddenly being presented with another incident entirely. In this case it is not evidence of an intent to mislead. (Tr. 26-28) Compounding an already unsettling situation was the fact that the interview was conducted virtually, via Microsoft TEAMS, which can make communication even more challenging. In spite of this, Respondent continued to answer the questions which were posed to her, steadfastly insisting that she did not intentionally disconnect the call with Complainant. (CCRB Ex. 3A at 26-28) Her testimony at trial was candid and convincing, in particular as she described being nervous and unsure of whether she was permitted to ask questions, or make demands during an official interview.

Based on the foregoing, I find that CCRB-APU has failed to prove by a preponderance of the credible evidence that Respondent provided a misleading official statement to CCRB in violation of A.G. 304-10. I therefore find Respondent not guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 1, 2019, has been found guilty of refusing to provide her name and shield number upon request during a phone call while she was assigned as the "TS" operator on August 20, 2020. The presumptive penalty for each of these specifications is three (3) vacation days; the mitigated penalty is training. CCRB recommends the presumptive penalty of three (3) vacation days for each specification to run concurrently.

As discussed above, Respondent's hesitation to provide this information is tantamount to refusal to do so. While I credited Respondent's explanation that she was unsure of the rules, the requirement to do so is not new and is quite clearly spelled out in Departmental guidelines as well as in training. Ignorance of this straightforward, well-known rule is not a reasonable excuse under these circumstances. The requirement for an officer to identify themselves to individuals they are interacting with is fundamental to police accountability, and must be strictly adhered to.

While Respondent admitted that she did not immediately state her name and provide her shield number when asked, and stated that she now knows what is required, a penalty which corrects the inappropriate behavior, deters future misconduct, and provides notice of the consequences of failing to comply with this important rule is warranted. Taking into account the totality of the facts in this matter, I recommend the presumptive penalty set forth in the Disciplinary Matrix, that Respondent forfeit three (3) vacation days for Specification 1 and three (3) vacation days for Specification 2 to run concurrently, for a total forfeiture of three (3) vacation days.

APPROVED

JAN 30 2024
Edward A. Caban
EDWARD A. CABAN
POLICE COMMISSIONER

Respectfully submitted,

Anne E. Stone

Anne E. Stone
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ARIANNY BERNABEL
TAX REGISTRY NO. 967772
DISCIPLINARY CASE NO. 2022-25301

Respondent was appointed to the Department on July 1, 2019. On her most recent annual performance evaluations, she was rated "Exceeds Expectations" for 2021 and 2022. She has been awarded one medal for Meritorious Police Duty and two medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials